

United States District Court  
District of Massachusetts

**ALBERTO TRAPAGA,**

**Petitioner,**

**v.**

BRUCE CHADBOURNE, Interim  
Director, Bureau of Immigration  
and Customs Enforcement, et al.

## Respondents.

Civil Action No.  
04-12599-NMG

# MEMORANDUM & ORDER

GORTON, J.

In the instant petition for a writ of habeas corpus, petitioner, Alberto Trapaga ("Trapaga"), seeks to compel the Bureau of Immigration and Customs Enforcement ("ICE") to remove him from the custody of Massachusetts and to deport him. Respondents move to dismiss for lack of subject matter jurisdiction.

Petitioner left Cuba and entered the United States on May 27, 1980. In 1982, he was convicted in the Commonwealth of Massachusetts of assault and battery by means of a dangerous weapon and assault with intent to commit rape. He was sentenced to twenty years of incarceration but was paroled in 1986. He was ordered deported and he was held in federal custody by the Immigration and Naturalization Service until 1991 at which time

he was paroled. In 1992, he violated his parole by committing a robbery and was re-incarcerated by the Commonwealth of Massachusetts. According to petitioner, his sentence was completed on March 2, 2003.

Prior to his scheduled release, however, the Commonwealth of Massachusetts moved to have the petitioner committed as a sexually dangerous person. A hearing was held before the Massachusetts Superior Court and he was committed indefinitely. He remains in the custody of the Commonwealth at the Nemasket Correctional Center.

On December 9, 2004, Trapaga filed the instant petition for a writ of habeas corpus seeking 1) an order compelling ICE to remove him from state custody and to execute the previous removal order and 2) monetary damages.<sup>1</sup> On January 31, 2005, respondent moved to dismiss for lack of subject matter jurisdiction arguing that the relief petitioner seeks is unavailable under the statute.

Respondent is correct. Pursuant to 8 U.S.C. § 1252(g):

no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien.

The United States Supreme Court has interpreted that provision as

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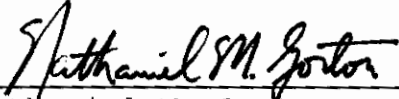
<sup>1</sup>Although Trapaga cites 28 U.S.C. § 2241 as the basis of his petition, he, presumably, meant to refer to § 2254.

restricting judicial review of an agency decision not to act upon an order of deportation. Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 484-85 (1999). Thus, petitioner may not challenge the decision of ICE not to act upon the removal order and this petition for a writ of habeas corpus must be dismissed.

**ORDER**

In accordance with the foregoing, respondent's motion to dismiss (Docket No. 6) is **ALLOWED** and this petition for a writ of habeas corpus (Docket No. 3) is **DISMISSED**.

**So ordered.**

  
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Nathaniel M. Gorton  
United States District Judge

Dated August 19, 2005